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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing	)	
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Filing Date: March 1, 2018	)	Case No.: PSH-18-0023
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Issued: June 26, 2018

**Administrative Judge Decision**

Richard A Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor. In October 2016, the Individual voluntarily entered an outpatient substance abuse treatment program to treat his alcohol misuse and depression. Ex. 3 at 1. In May 2017, the Individual sat for a Personnel Security Interview (PSI) with the Local Security Office (LSO) to update DOE on his recovery efforts. Ex. 8. Given the Individual’s admitted alcohol misuse and depression, the LSO referred the Individual to a DOE contractor psychologist (DOE Psychologist) for an evaluation. Ex. 6. Despite telling the DOE Psychologist that he had abstained from alcohol for nearly one year, the Individual tested positive for alcohol consumption within the previous 80 hours. Ex. 6 at 5, 7, 9. The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that his security clearance was suspended and that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed Administrative Judge William Schwartz to preside in this matter on March 5, 2018, and later appointed me as the Administrative

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<sup>1</sup> Under the regulations, “Access authorization” means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

Judge in this matter on April 11, 2018.<sup>2</sup> At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his wife, his counselor, his current DOE supervisor, his friend, and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-18-0023 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted eight exhibits, marked as Exhibits A through H.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guidelines E, G, and I of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

The LSO alleges that the Individual demonstrated a lack of candor in his PSI and psychological evaluation. Ex. 1 at 1. Guideline E relates to conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations, which raises questions about an individual’s reliability, trustworthiness and ability to protect classified information. Any failure to provide truthful and candid answers during the security clearance process is of particular concern. *See* Adjudicative Guidelines at Guideline E ¶ 15.

The LSO also alleges that the Individual’s psychological evaluation shows that he habitually consumes alcohol to the point of likely impaired judgment. Ex. 1 at 1. The LSO further alleges that during his PSI, the Individual described long standing patterns of heavy alcohol consumption and told the Investigator that he received an alcohol-related traffic citation when he was 19. Ex. 1 at 2. The Adjudicative Guidelines state, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.” Guideline G at ¶ 21.

The Notification Letter also contained derogatory information that the LSO cited as Guideline I (Psychological Conditions). Specifically, the LSO stated that the Individual’s situational depression elevates his risk of consuming alcohol. Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Guideline I at ¶ 28. Guideline I further provides that “an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness” may raise a security concern and be disqualifying. Guideline I at ¶ 28(b).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the restoring or continuation of a person’s access authorization will not endanger the common defense and

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<sup>2</sup> I was appointed to the case due to the retirement of Administrative Judge Schwartz from Federal service.

security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for restoring security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

The Individual has held a DOE security clearance for several years. In October 2016, the Individual began treatment for depression and problematic alcohol consumption, both of which had escalated following the deaths of his mother and sister. Ex. 3 at 1; Ex. 8 at 11–12. He entered a 90-day Intensive Outpatient Program (IOP) and timely notified his employer that he was seeking treatment. Ex. 3 at 1; Ex. 8 at 35–36.

For several months, the Individual abstained from alcohol, took an antidepressant as prescribed, and attended Alcoholics Anonymous (AA) meetings. Tr. at 70, 79, 109. After about nine months of abstinence from alcohol, the Individual developed a “false sense of security” and felt that he could drink in moderation without a problem. Tr. at 94. He resumed his alcohol consumption from August through November 2017. Tr. at 66, 79, 119.

At his PSI in May 2017, the Individual reported that he was abstaining from alcohol and intended to continue abstaining forever. Ex. 8 at 51. Because its concerns related to alcohol and mental health, the LSO referred the Individual to the DOE Psychologist for an evaluation. At his September 2017 evaluation, the Individual again reported that he was abstaining from alcohol and intended to continue abstaining forever. Ex. 6 at 5. During the evaluation, the DOE Psychologist requested that the Individual take lab tests that would detect alcohol consumption within the previous 80 hours and within the previous few weeks.<sup>3</sup> Ex. 6 at 5, 7. The Individual became defensive, calling the proposed tests “intrusive.” Ex. 6 at 5. He then admitted to having consumed alcohol recently in response to a conflict with his wife. Ex. 6 at 6. The lab tests were positive for alcohol consumption. Ex. 6 at 7. In a September 22, 2017, report (Report), the DOE Psychologist

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<sup>3</sup> The DOE Psychologist requested that the Individual undergo testing for the presence of Ethyl Sulfate (EtS) and Phosphatidylethanol (PEth). The presence of EtS in a blood sample indicates that a person has consumed alcohol within the prior 80 hours. Ex. 6 at 7. The presence of PEth indicates prior moderate to heavy alcohol use. Ex. 6 at 7; Ex. H.

concluded that the Individual habitually consumed alcohol to a point of likely impaired judgment and that there was not adequate evidence of rehabilitation or reformation. Ex. 6 at 9. He recommended that the Individual return to the IOP for at least one month, continue counseling for six months, attend a minimum of three AA meetings per week for one year, and abstain from alcohol for at least one year. Ex. 6 at 9–10.

The DOE Psychologist also evaluated the Individual's depressive symptoms. Several members of the Individual's family had died, causing his depression. Ex. 6 at 7–8. The DOE Psychologist noted that the Individual's depression contributed to his alcohol abuse. Ex. 6 at 8, 10. He also described the Individual as "generally concerned, committed to change, and ... forthcoming." Ex. 6 at 8. He recommended that the Individual undergo a medication review with a psychiatric professional and that he commit to using his medication and other "treatment modalities." Ex. 6 at 10. Based on the DOE Psychologist's Report and the PSI, the LSO suspended the Individual's security clearance.

At his hearing, the Individual presented the testimony of his supervisor at the DOE facility and a friend who has known him for over 20 years. Both testified that the Individual is honest and reliable. Tr. at 13, 17, 58–59. The Individual's counselor also testified that she finds the Individual very honest. Tr. at 43. She testified that the Individual's alcohol consumption originally escalated in response to the deaths of his mother and sister. Tr. at 36–37. She further testified that she had seen the individual from January 2017 through May 2018 but that he had stopped coming in August 2017 and returned in March 2018. Tr. at 32, 35. At their March 2018 meeting, the Individual told her that he had relapsed for several months but had now stopped consuming alcohol and was attending AA. Tr. at 35. The counselor testified that the Individual is not currently taking an antidepressant. Tr. at 35. She recommended a minimum of one year of abstinence for the Individual to have a good prognosis. Tr. at 45–46.

The Individual's wife testified that the Individual began consuming an unhealthy amount of alcohol after his mother's and sister's deaths and that, as a result of his alcohol consumption, he became less engaged with the family. Tr. at 62–66. At that point, she told him she was concerned about his alcohol use. Tr. at 66. She testified that, since he started abstaining from alcohol, the Individual had begun attending church regularly, had been meeting with his counselor, and had started an exercise program to help maintain his sobriety. Tr. at 68. She testified that the Individual's last drink was on November 9, 2017. Tr. at 76. She described the Individual as trustworthy and honest, testifying that she believed the Individual lied to the DOE Psychologist because he was afraid. Tr. at 75, 83. She also described the Individual's depression as situational. Tr. at 82.

The Individual testified that he lied to the DOE Psychologist to protect his livelihood. Tr. at 91. He further testified that his counseling, AA and church attendance, increased spirituality, and desire to be reliable for his family all contribute to his continued honesty and candor. Tr. at 95. He stated that he has a support system in place to support his continued honesty. Tr. at 97.

The Individual stated that he considered himself an alcoholic and that he knows he can never consume alcohol again. He testified that he is unable to consume alcohol in moderation. Tr. at 94. He took full responsibility for the concerns that led to his clearance's suspension, saying "nobody is responsible for my sobriety but me. I cannot let anybody affect my sobriety." Tr. at 99. He testified that he is not currently consuming alcohol and described new coping skills to help him remain abstinent for the rest of his life. Tr. at 98–101. He resumed AA attendance in November

2017 and stated that he intends to continue with the program. Tr. at 103–05. The Individual also stated that he intends to remain abstinent, even if his clearance is not restored. Tr. at 118.

The Individual testified that he does not feel depressed when he abstains from alcohol. Tr. at 108. He stated that he used alcohol to self-medicate for his depression. Tr. at 98. He expressed reservations about taking an antidepressant, but described using talk therapy to confront the root causes of his depression. Tr. at 108–09. He testified that he now has the tools to deal with painful and stressful events in his life. Tr. at 108–09. He further testified that he intends to continue with therapy and AA meetings. Tr. at 110. He stated that, when he transitioned off of his antidepressant, he did so in consultation with a mental health provider. Tr. at 109–10.

The DOE Psychologist testified that he feels good about the Individual’s lifestyle changes and that he was moved by the Individual’s sincerity. Tr. at 127, 129. He believes that the Individual is serious about these changes. Tr. at 129. He believes the Individual to be honest and gave him a prognosis of fair to good. Tr. at 132, 140–41. However, the DOE Psychologist could not find adequate evidence of rehabilitation or reformation because the Individual did not follow through with his treatment plan. Tr. at 144. He testified that the Individual needed a full year of sobriety to evidence rehabilitation or reformation. Tr. at 132. Furthermore, the DOE Psychologist was not convinced that the Individual’s depression was resolved. Tr. at 142–43. He testified that the Individual had been drinking in response to his depression and that his depression may have also been worsened by his drinking. Tr. at 126. He expressed concern that the Individual’s depressive symptoms could “impinge on his sobriety.” Tr. at 142.

## **V. ANALYSIS**

The issue before me is whether the Individual has mitigated the security concerns raised by the Guideline E, G, and I derogatory information detailed in the Notification Letter. In making this decision, I must consider all of the evidence, both favorable and unfavorable, in a common sense manner. I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security and is clearly consistent with the national interest.

### **A. Guideline E**

Guideline E provides that the following conditions (in relevant part) may mitigate Personal Conduct security concerns: (1) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; (3) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and (4) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Adjudicative Guidelines at ¶ 17(a), (c), (d), (g).

When confronted with the possibility that his lack of candor regarding his past alcohol usage would be discovered, the Individual admitted his prior alcohol use to the DOE Psychologist. He did not refuse to take the lab tests and did not continue with his dishonesty. He has acknowledged his mistake and has used therapy and AA to work toward rebuilding the trust that he lost when he misled the DOE Psychologist. Every witness, including the DOE Psychologist, testified as to the Individual's honesty. However, the Individual's dishonesty is intimately related to his misuse of alcohol.<sup>4</sup> Because I find, *infra*, that the Individual is not totally rehabilitated from his alcohol problem as of the time of the hearing, I cannot find that the guideline E security concerns related to his lack of honesty have been totally resolved.

## **B. Guideline G**

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when: (1) the individual's alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established a pattern of modified consumption or abstinence. Guideline G at ¶ 23(a)–(d).

Clearly, the individual has made significant efforts to overcome his problematic alcohol consumption, resulting in substantial progress. Unfortunately, there is not enough evidence of recovery to show that he is rehabilitated. The DOE Psychologist and the Individual's counselor each recommended one year of abstinence at a minimum, and the Individual has not met that requirement for rehabilitation. Tr. at 45-46, 144. The Individual's relapse after nine months of sobriety underscores how important that one year benchmark is. The relapse introduces some doubt that the Individual can maintain his abstinence. The Individual has submitted evidence of negative blood test results obtained as recently as April 2018 indicating that he has not consumed alcohol in the prior few weeks. He has also presented evidence of his participation in activities to improve his health. However, I cannot find that this or the other testimony presented at the hearing is sufficient to totally resolve the security concerns arising from the expert testimony regarding the state of his rehabilitation from his alcohol misuse. Consequently, I find that the LSO's security concerns under Guideline G are not resolved.

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<sup>4</sup> I note that, when the Individual stated in his PSI that he had abstained from alcohol since October 2016, he had not yet relapsed. The statement was true and, therefore, is not an appropriate basis for Guideline E's invocation. However, his similar statement to the Psychologist was false and, therefore, properly implicates Guideline E.

### **C. Guideline I**

Guideline I identifies five conditions that can mitigate security concerns arising from psychological conditions, three of which apply to the present case. Section 29(a) provides that mitigation might result when “the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan.” Section 29(b) provides that mitigation might result when “the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional.” Section 29(c) provides that mitigation might result when a “recent opinion [is rendered] by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation.”

The Individual, his counselor, his wife, and the DOE Psychologist all testified that the Individual’s depression is intimately linked to his alcohol consumption. And while no one was quite sure which caused which, they all agreed that the Individual’s alcohol problems started in earnest when he experienced depression after tragic life events. The DOE Psychologist opined that the Individual’s psychological condition, situational depression, is interconnected to his alcohol problem. The Individual becomes more depressed when he drinks and may drink when he is depressed. Tr. at 126. His alcohol concerns are not currently resolved, and as such I cannot be certain that the Individual’s depression will not return. The Individual’s depression will remain a risk as long as his alcohol problem is not totally rehabilitated. Accordingly, I cannot find that the LSO’s parallel psychological concerns under Guideline I are resolved.

### **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual’s eligibility for a security clearance under Guideline E, G, and I of the Adjudicative Guidelines. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring the individual’s DOE access authorization “will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A Cronin, Jr.  
Administrative Judge  
Office of Hearings and Appeals